

**ANDOVER BOARD OF HEALTH**  
**Minutes**  
**April 14, 2014, 6:00 P.M.**  
**CD&P First Floor Conference Room**  
**36 Bartlet Street**

The Board of Health Meeting was called to order at 6:01 p.m. Present were Ms. Candace Martin, Chairman, Ms. Katherine Kellman, Vice-Chairman, Gopala K. Dwarakanath, M.D., Clerk and Mr. Thomas G. Carbone, Director of Public Health.

**I. Approval of Minutes**

- **March 17, 2014**

*Motion by Ms. Martin, seconded by Ms. Kellman, to approve the Minutes of March 17, 2014. Unanimous approval.*

**II. Appointments & Hearings**

- **6:00 p.m. – Matthew Gardner for Andover Portland Ave. Associates, LLC, for Building 3, Unit 313 Casco Crossing –Appeal of Orders (Continued)** – Present were Thomas Ciampa, tenant, and Matthew Gardner, Casco Crossing Manager. Ms. Martin stated that this Hearing concerned the appeal of orders that was continued from the last Board of Health meeting concerning the functionality of the call box at the door. Ms. Martin asked Mr. Ciampa to join the group at the table. At the last meeting, the Board asked for management to provide different options to put the call box into service. Mr. Gardner stated that the call box is now in service. Now when you dial the telephone, the call box allows two-way communication. Mr. Ciampa was the first person to be registered and Mr. Gardner is in the process of collecting phone numbers for the other tenants. Mr. Carbone stated that he performed an inspection and there are other outstanding issues left over that need to be discussed, but that the Board should take action on the appeal. Mr. Gardner stated that he wanted to withdraw the appeal. Building 3 is ready to be completed, and the others should be done by the end of May, depending on when Verizon can run the rest of the lines.

*Motion by Ms. Martin, seconded by Ms. Kellman, to close the Appeal of ORDERS Hearing. Unanimous approval.*

Mr. Carbone stated that there were other outstanding issues with the original ORDER. The new door is in, but when Mr. Carbone and Chris Clement, Inspector of Buildings, went out to look at it, the door was still not pulling shut completely. Mr. Gardner stated that they are still tweaking the door and will make an adjustment on the closure. There was also still an outstanding problem with one of toilets, but a plumber fixed it and Mr. Carbone verified that today.

Mr. Carbone stated that he had not received an action plan from Mr. Gardner for the sidewalk repair. Mr. Gardner replied that they intend to redo the whole sidewalk, but that he doesn't have the actual quote; Mr. Stapinski, one of the owners, should have it. Ms. Martin requested that the Board get documentation by close of business Wednesday, April 16<sup>th</sup> with a plan on the sequence of the repair of the walkways as well as a completion date. She would like that as well as an update on the door maintenance issue as well. Mr. Carbone informed the Board that the walkway repair work may take longer than a month because a lot has to get done.

Mr. Ciampa stated that he is handicapped and that there are others in the building who are also. He also stated there was no ramp from the parking area to the sidewalk near his door and he is afraid to injure his foot. He was glad they are fixing the door, but felt that things are not getting done fast enough for people with disabilities. Ms. Martin asked Mr. Gardner if his plan could address the areas that do not have wheelchair ramps, or if that was already part of the plan. Mr. Gardner replied that that was part of the Department of Public Safety Architectural Access Board ORDER that they are working on, and they have just been given a 90 day extension for compliance, due to the frozen ground and the need of a plan to get the work done. Mr. Gardner assured the Board that the repairs will be made by the end of those 90 days.

*Motion by Ms. Martin, seconded by Ms. Kellman to uphold the ORDER and the request for the remaining two items; the door adjustment and the concrete replacement; that a written plan be submitted by the end of day on April 16, 2014 with the overall expectation that all work will be completed by end of June, 2014. Unanimous approval.*

- **6:10 p.m. – Andover Portland Ave. Associates, LLC, for Building 1, Basement, Casco Crossing – Show Cause Hearing.** – Ms. Katherine Bishop, Tenant, was present at the Meeting. Mr. Carbone explained that Building 1 has had a problem with chronic dampness in the basement. There was originally an operating dehumidifier that was stolen, but it now has been replaced. The dehumidifier addresses the water vapor issue, but doesn't address water coming in. Even with the ground freezing over the winter, there was still evidence of water every time Mr. Carbone went there. Mr. Carbone had spoken with Mr. Gardner that both issues needed to be addressed for a better solution. Mr. Gardner stated that they think they have to install 2 sump pumps.

Ms. Bishop provided the Board with some pictures of the water issues and had a picture showing a measurable amount. <sup>1</sup>Ms. Bishop stated that when she goes to the basement door she can smell the mold there, and outside her front door as well. She showed pictures of flooding outside her door in February when there was snow on the ground. It was after a rain storm, but the water wasn't draining. Mr. Gardner stated that the drain was probably clogged with mud. Concerning the basement water damage, it is necessary for them to install pumps to pump out the standing water. Mr. Gardner stated that he was hoping to have the trench and pumps put in by Friday. Ms.

---

<sup>1</sup> Pictures are available in the Town Offices Health Division in a Complaint file for Casco Crossing, Building1.

Martin asked how it will be maintained, and Mr. Gardner stated that they will install an alarm and that someone will check it every day.

Ms. Bishop stated that when management worked in the basement, instead of removing the mold on the walls, they plastered right over it. She had a picture showing the corner of the stairs and wall that had mold on it. Ms. Bishop has been concerned with some health issues she has had recently as well as the welfare of her child. Mr. Gardner stated that they did cut out 45 sheets of drywall and replaced that space with moisture board. They have a dehumidifier running 24/7 down there now, and will install the pumps. If they need to do more, they will. Ms. Martin told Mr. Gardner that the pump installation should be done first, and all areas that show visible signs of mold should be cleaned professionally with bleach. Ms. Martin wanted a written plan for cleanup also.

Ms. Martin stated that some issues have been corrected, but some others still need to be corrected. She told Mr. Gardner that she appreciates his efforts to try to answer for the owners, but from this point forward she would expect a prompt and complete response to problems. When the call box didn't work he worked to make it functional, and the Board appreciated his efforts to do the sump pump installation. There is definitely a chronic dampness issue, and the Board will give him sufficient time to correct it. As far as the problems with Unit 118 and the associated basement, Ms. Martin would like to request a formal response by the end of the day, Wednesday, April 16, 2014, on the plans for the installation of the sump pump and the remediation within the basement.

*Motion by Ms. Martin, seconded by Ms. Kellman to continue the Hearing to next month's Board of Health Meeting on May 12, 2014, with the requirement to have a written response by end of day, Wednesday, April 16, 2014 for the installation plans for the sump pumps and the remediation of the basement. Unanimous approval.*

### **III. Discussion**

- **Proposed Tobacco Regulations** – Present was Mr. Ronald Beauregard, Director of the Tobacco Control Program. Mr. Carbone stressed that this is just a discussion of the Board and not a Hearing. Ms. Martin stated that from the draft regulations and public comments, the two main issues were selling cigars as single units and the restriction on smoking lounges.
  - **Regulation 7.1 Requires that Cigars be Sold in Packages of four Unless they Cost at Least \$2.50 Each** - Ms. Martin stated that she had asked around and some people said that they do buy a single cigar. Dr. Dwarakanath stated that the sale of just one cigar is so low so if a package of four is more expensive that may discourage a casual smoker. Ms. Martin stated that maybe if a person only wants one, but buys a pack of four, they will smoke all four. Mr. Beauregard discussed how some of the prices are as low as \$.69 to \$1.50 per cigar. He stated that the flavored cigars that have appealing packaging are really geared toward youth,

because most adults do not want those flavors. Mr. Beauregard stated that not everyone is selling single cigars, but the reason it is popular is the low price point. It is well established in the data through Mass. Dept. of Public Health is that a 10% increase in price in cigarettes will result in a 7% reduction in youth consumption. Ms. Martin stated that what she heard from businesses was that if we put a restriction of selling cigars in packs of four, stores in other towns will get the business. Mr. Beauregard stated that communities that have implemented selling packs of four or five cigars have not seemed to suffer any loss of revenue; however it has only been a short amount of time that the new regulations have been implemented. Mr. Beauregard stated that stores are starting to decrease their prices for the multipacks of cigars which is also geared toward youth. As the price goes down, usage goes up. After more discussion concerning pricing and packaging the Board decided to make a motion.

*Motion by Dr. Dwarkanath, seconded by Ms. Martin, to leave 7.1 in the Regulations. Vote taken: Dr. Dwarkanath voted yes, Ms. Martin voted no, and Ms. Kellman chose to abstain.*

Discussion followed. Ms. Kellman abstained because she felt that either way the Board voted it would not make a big impact. The Board discussed the possibility that this could be revisited at another time after it has a chance to gather more data. Dr. Dwarkanath stated that the only data we have now is that the increase in price decreases the chance of people smoking more. Since the Board Members were undecided about leaving the regulation in, Mr. Carbone stated that they could leave the regulation as is, amend the regulation, or take it out completely.

*Motion by Ms. Martin, seconded by Ms. Kellman to hold off on any restrictions on cigar sales until the Members have more data to substantiate whether this does make an impact and does not promote a person to smoke more because there would be more cigars available to that individual. 7.1 will be stricken from the regulations. Ms. Martin and Ms. Kellman in favor; Dr. Dwarkanath, opposed.*

- **Regulation 18.2 would Prohibit Smoking in Retail Tobacco Stores and Smoking Bars** - Smoking lounges are currently allowed by State law. Ms. Martin stated that she was still in support of this regulation because smoking bars are an encouragement for smoking.

*Motion by Ms. Martin, seconded by Ms. Kellman to keep Regulation 18.2 in place. Unanimous approval.*

Mr. Carbone asked if there were any other things the Board would want to change before the revised regulations go to Town Counsel. Mr. Carbone reported that he had heard a concern about adult smoking in playgrounds. Smoking in school playgrounds is already prohibited, but there are several parks in Andover that are considered Town property and people do smoke in those areas. The Board could pass a Regulation banning it. Mr. Carbone spoke with the Town Manager who said that the Board of Selectmen may look for Board of Health leadership on that issue. The Board of Health may suggest to the

Board of Selectmen that it make policy to not allow smoking at Municipal properties. Mr. Beauregard stated that Dracut passed regulations restricting smoking in a 20' radius around children on any playground equipment. Signage should be prominent and the language should be firm. Ms. Martin stated that she would endorse a restriction on smoking in playgrounds and playing fields. The Board directed Mr. Carbone to draft a regulation concerning this issue and send it to Town Counsel for review.

Mr. Carbone wanted to share some comments from Assistant Health Director, Joanne Martel, R.N. concerning some tobacco regulations that are being put into place in other communities. Some communities are limiting the amount of establishments that can sell tobacco products, some prohibit the sale of tobacco in any health care institutions, and some have raised the age to purchase tobacco products from 18 to 21 years of age. Ms. Martin stated that the Board was not going to include any of these into the new regulations at this time. Mr. Carbone will postpone the discussion until the June 9, 2014 Board of Health Meeting so Ms. Martel can come and discuss these issues with the Board.

- **Review Town Meeting Articles** – The Board members discussed which Articles that the Board should endorse. Mr. Carbone explained that the Board doesn't have to take a stand on the Articles, but may want to endorse some of them. Ms. Martin was very interested in Article 60 – Sewer Master Plan Study. Mr. Carbone explained that the old Master Plan was outdated and priorities may have changed. The Town currently will not bring sewer to any areas where pumps are needed. The only way to get sewer to the Haggetts Pond area is with a pump. Currently, many septic systems in the watershed require Local Upgrade Approvals. There is a need to change the mindset of having a total gravity-fed sewer system. Ms. Martin asked if staff could review how many systems with LUA's had been approved within the watershed; Mr. Carbone reported that it could be done.

The Board discussed Article 34 – Medical Marijuana Overlay District, and Article 35 – Medical Marijuana Treatment Facilities. Mr. Carbone explained that he worked with the Planning Director, Police and Fire Chiefs, and others to determine an overlay district so you don't have a facility in an area that is around children or schools. The three areas that have been chosen are near interchanges and business parks. He recommended the Board support Article 34 and 35.

The Board made decisions on the following Articles:

- Article 11A - Grant Program Authorization - Support
- Article 16 - Revolving Funds - Support
- Article 18 – Support for Civic Events – No Recommendation
- Article 21 – GIS Data Update – No Recommendation
- Article 34 – Medical Marijuana Overlay District - Support
- Article 35 – Medical Marijuana Treatment Facilities - Support
- Article 36 to 38 – Setting of Marijuana Overlay Districts – No Recommendation

- Article 55 – Open Space Management – No Recommendation
- Article 56 – Transfer of Open Space Land Acquisition Bonding Appropriations – No Recommendation
- Article 60 – Sewer Master Plan Study – Support
- Article 62 – Water Maintenance – No Recommendation
- Article 63 – Mobile Food Vendors – No Recommendation

*Motion by Ms. Martin, seconded by Dr. Dwarkanath, to support Articles 11A, 16, 34, 35, and 60. Unanimous approval.*

- **Mosquito Control Vector Management Plan** – Mr. Carbone explained that the Board does not need to take any action on this plan; it was for informational purposes only.
- **May Board of Health Meeting versus Town Meeting** – Mr. Carbone explained that the May 12, 2014 Board of Health Meeting would be on the same night as a third night of Town Meeting and no Boards are allowed to have a meeting during Town Meeting. The Board could meet that night, but would be limited to 45 minutes, because the Town Meeting starts at 7 p.m.

#### **IV. Old Business**

- **7R Lowell Junction Road** – Mr. Carbone had no update for the Board except the decision from the Clerk Magistrate at Housing Court to continue the matter until April 30, 2014. Ms. Martin expressed hope that they connect to sewer quickly.

#### **V. Subdivision Definitive Plans**

- **Krafton Way** – Dr. Dwarkanath disclosed to the Board that Chinmaya Mission is an abutter to this property, and that he is the President of the Board of Directors for Chinmaya Mission. Mr. Carbone stated that this property abuts the Chinmaya Mission, Rte 495 and the Shawsheen River. Right now there is a single family home on the property. They cannot move the driveway any further because Mass DOT has a restriction that doesn't allow another access, so they will have to have a shared access. They want to subdivide the property and build a dwelling for their son that would be served by municipal water and sewer. There are wetlands in the back of the property and not a lot of flat land. Because of the Shawsheen River there is a 200' riparian zone they cannot build near because of the Rivers Act. They want to build outside of the 100' buffer zone, but some work will need to be done within the buffer zone to make the sewer connection. They have proposed to share a 4" PVC sewer line, but that would not be allowed. A shared line would require a Homeowner's Association and an 8" pipe. We should see a revision using a new 6" line coming from the existing house. There will be two separate lines and one of the houses will be protected by an easement. Mr. Carbone recommended approval.

*Motion by Ms. Martin, seconded by Dr. Dwarakanath to approve the Krafton Way subdivision Definitive Plan with the following three requirements.*

- 1. Any modification, amendment, or change to the above-cited Definitive Plan shall be submitted as a new or modified Definitive Plan in accordance with the provisions of MGL Chapter 41, Section 81U.*
- 2. Subject to Conservation Commission approval or by Order of Conditions or Negative Determination.*
- 3. Subject to the submittal of a revised sewer connection plan for both parcels.*

*Unanimous approval.*

## **VI. Plan Review**

- **DWRP – Variances/Local Upgrade Approval**
  - **15 Webster Street – LUA to allow Sieve Analysis in Lieu of Perc Test; LUA to allow SAS to be 3’ above water table, 4’ Required** – Mr. Carbone informed the Board that this was a failed septic. There is a high ground water table so a Perc test couldn’t be done, so a sieve analysis was done instead. Every perc rate we have in this area exceeds two minutes an inch. Mr. Carbone explained that the homeowners came in for a Building Permit for a deck, garage, and an addition of a spa room. The spa would be more like an exercise or bathroom area and will house a therapy pool. We did not need to look into capacity for the addition, but did not want the addition to be put in where the septic tank or leach field is located. The Title 5 Inspector found that the existing septic tank was under the porch and overflowing, so that is what is driving the upgrade. If the Board does not grant the 1’ setback, the cost estimate would be high because a retaining wall and pump would be needed. By granting this LUA the homeowner would have a savings in cost.

*Motion by Ms. Martin, seconded by Ms. Kellman to approve the LUA to allow a sieve analysis in lieu of a Perc Test; LUA to allow the SAS to be 3’ above the water table, where 4’ is required*  
*Unanimous approval.*

- **444 Lowell Street – LUA to allow SAS to be 84’ from a Wetland Bordering a Tributary to a Water Supply, 100’ Required** – Present was Benjamin Osgood, Design Engineer. Mr. Carbone explained to the Board that with the LUA the leach field would be less than the required 100’ from the tributary to the water supply. At this time the existing cesspool is only 15’ away, so they want to increase the distance of the leach field to 84’. Mr. Osgood explained that there was one large maple tree on the front of the lot that prevents the system from being moved further away, but to take the tree down would be very expensive. If the system was moved closer to the property line, a retaining wall would be needed at a high cost as well. Mr. Carbone recommended approval of the LUA.

*Motion by Ms. Martin, seconded by Ms. Kellman to approve the LUA to allow the SAS to be 84' from a wetland bordering a tributary to a water supply, where 100' is required. Unanimous approval.*

## **VII. Staff Reports**

### **A. Director's Reports:**

- **Important Dates:**

- May 5 & 6, 2014 – Annual Town Meeting
- May 12, 2014, at 6 p.m. – Board of Health Meeting
- May 15, 2014 at 6:30 p.m. – MRC Meeting
- June 9, 2014 at 6 p.m. – Board of Health Meeting

- **Evaluation of Permitting Process (not on Agenda)** - Mr. Carbone explained that the Division Heads have been concentrating on the permit approval process for 800 Federal Street which Schneider Electric just opened. On the Planning Board side, it took about 218 days from the start of the procedure to when they filed their decision at the Registry of Deeds. There were about fifteen days where staff was actively working on the project; doing reviews, having Planning Hearings. There were about 40 days that were built in because of statutory requirements and advertising two weeks before the Hearing. There is also a 30 day Appeal period to end before anything more can be done. There were about 117 days of wasted time in two different areas on the timeline. One area is when they come to the Planning Board and request a delay at the Applicants request. There is also a time delay between when the Planning Board makes a decision and when they actually filed the decision at the Registry of Deeds. When we looked at other permitting going on, they already had a decision from the Conservation Commission, but the Applicant wanted to make a change and reopened process, so the timing had to start over. When looking at the Building Permit side, Health was the last to sign off 20 days from the start of the Building Permit process. However, when you break it down and look at Health's timeline, they did not apply for their sewer permit until about 14 days after they applied for their Building Permit. The plans were pretty extensive, so the Building Division needed some time to review all the plans. Health turned around the approvals in six to seven days. It is interesting to see how this process pulls together. Once we are comfortable with the process, we will have a discussion with our staff. We will bring in the development staff from 800 Federal Street and see what they think could be improved upon on both the Applicant and the Town sides. When we are done we will have a product we can plug and play with other projects coming through in the future. Mr. Carbone thinks that after this process we will be able to show that Town staff and Town Boards actually did a good job. However, some delays are unavoidable because of the 30 day statutory waiting period.



- **Interns** – Mr. Carbone informed the Board that an Intern who was working with the Town Nurses did a presentation about HPV to the School Nurses and hope to put together a Springtime presentation as well. The Division received a very nice note from her school after the presentation.

The Health Division will be taking on another Andover resident as an Intern. She is a Freshman at the University of Massachusetts, Amherst, and will come for a Summer Internship. Mr. Carbone would like to utilize her to help the Health Division gain a social media presence. Everything we are seeing in Emergency Management says to establish this now so that when you need it, it is available. He also wants to get her involved in some of our regulatory work on updates such as regulations for animals.

- **Salt Shed** – Mr. Carbone stated that the Town Manager got a complaint that the existing salt shed had a tear in it and that salt was exposed to the environment. Massachusetts Department of Transportation (MassDOT) has decreased salt in that space and has used tarps over any exposed material. The expectation is that the new shed will be up and occupied for the next snow and ice season. MassDOT will take the old salt shed apart and clean up the area.

B. **Nurses' Report for March, 2014** – The Nurses' Report for March, 2014, were for informational purposes only.

C. **Inspectors' Reports for March, 2014** – The Inspectors' Reports for March, 2014, were for informational purposes only.

#### **VIII. Board Member Reports**

- N/A

#### **IX. Adjournment**

*Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 8:41 p.m. Unanimous approval.*